

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 232.142 and 237.3, the Department of Human Services proposes to amend Chapter 105, “County and Multicounty Juvenile Detention Homes and County and Multicounty Juvenile Shelter Care Homes,” Chapter 114, “Licensing and Regulation of All Group Living Foster Care Facilities for Children,” and Chapter 115, “Licensing and Regulation of Comprehensive Residential Facilities for Children,” Iowa Administrative Code.

The proposed amendments:

- Prohibit the use of prone restraint (a physical restraint technique in which a child is held face down on the floor) in foster group care facilities, emergency juvenile shelters, and juvenile detention facilities. Safer methods of physical restraint exist. This change will align restraint standards for these facilities with state standards already adopted for educational settings and for psychiatric medical institutions for children.

- Allow attestations of employee health to be provided by advanced registered nurse practitioners or physician assistants as well as physicians. This change will make it easier for facility staff to obtain these statements, especially in rural areas.

- Add requirements for 24-hour supervision by staff members who are awake for the entire shift (instead of staff who are available while sleeping at the facility). For group care, these requirements were previously included in 441—Chapter 185, “Rehabilitative Treatment Services,” which has been rescinded.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before March 3, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

The Department will also hold a public hearing for the purpose of receiving comments on the proposed amendments on Thursday, March 3, 2011, from 1 to 2:30 p.m. in First Floor Southeast Conference Rooms 1 and 2 at the Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa.

Persons with disabilities who require assistive services or devices to observe or participate should contact the Bureau of Policy Coordination at (515)281-8440 before the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code section 232.142 and chapter 237.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions in rule **441—105.1(232)**:

“*Physical restraint*” means direct physical contact required on the part of a staff person to prevent a child from hurting self, others, or property.

“*Prone restraint*” means a physical restraint in which a child is held face down on the floor.

ITEM 2. Amend subrule 105.3(2) as follows:

105.3(2) Health of employees. ~~Staff~~ Each staff person who ~~have~~ has direct client contact or ~~are~~ is involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform ~~their~~ assigned duties. A statement ~~by a physician (as defined in Iowa Code~~

~~section 135.1~~) attesting to these facts shall be secured at the time of employment ~~and whenever necessary thereafter~~ and filed in the personnel records of ~~that the~~ staff person. A new statement shall be secured at least every three years. The statement shall be signed by one of the following:

- a. A physician as defined in Iowa Code section 135.1(4);
- b. An advanced registered nurse practitioner who is registered with and certified by the Iowa board of nursing to practice nursing in an advanced role; or
- c. A physician assistant licensed under Iowa Code chapter 148C.

ITEM 3. Amend subrule 105.16(3) as follows:

105.16(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in a standing position whenever possible.

- a. No staff person shall use any restraint that obstructs the airway of a child.
- b. Prone restraint is prohibited. Staff persons who find themselves involved in the use of a prone restraint when responding to an emergency must take immediate steps to end the prone restraint.
- c. If a staff person physically restrains a child who uses sign language or an augmentative mode of communication as the child's primary mode of communication, the child shall be permitted to have the child's hands free of restraint for brief periods unless the staff member determines that such freedom appears likely to result in harm to the child, others, or property.
- d. The rationale and authorization for the use of physical restraint, and staff action and procedures carried out to protect the ~~children's~~ child's rights and to ensure their safety, shall be clearly set forth in the child's record by the responsible staff persons.

ITEM 4. Adopt the following **new** definition in rule **441—114.2(237)**:

"Prone restraint" means a physical restraint in which a child is held face down on the floor.

ITEM 5. Amend subrule 114.7(2) as follows:

114.7(2) *Health of staff.* ~~Staff~~ Each staff person who ~~have~~ has direct client contact or ~~are~~ is involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform their assigned duties. A statement ~~by a physician (as defined in Iowa Code section 135.1(5))~~ attesting to these facts shall be secured at the time of employment ~~and whenever necessary thereafter~~ and filed in the staff record of the staff person. A new statement shall be secured at least every three years. The statement shall be signed by one of the following:

- a. A physician as defined in Iowa Code section 135.1(4);
- b. An advanced registered nurse practitioner who is registered with and certified by the Iowa board of nursing to practice nursing in an advanced role; or
- c. A physician assistant licensed under Iowa Code chapter 148C.

ITEM 6. Amend paragraph **114.8(2)"a"** as follows:

a. Children shall be provided with 24-hour awake supervision. There shall be at least one awake and readily accessible staff person on duty for each currently occupied living unit. The staff person shall make regular visual checks at least every hour throughout the night. A log shall be kept of all checks, including the time of the check and any significant observations. Policies for nighttime checks shall be in writing.

ITEM 7. Amend subrule 114.20(3) as follows:

114.20(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent behavior extremely disruptive to others or to prevent the child from injury to self, to others, or to property. Physical restraint must be conducted with the child in a standing position whenever possible.

- a. No staff person shall use any restraint that obstructs the airway of a child.
- b. Prone restraint is prohibited. Staff persons who find themselves involved in the use of a prone restraint when responding to an emergency must take immediate steps to end the prone restraint.
- c. If a staff person physically restrains a child who uses sign language or an augmentative mode of communication as the child's primary mode of communication, the child shall be permitted to have

the child's hands free of restraint for brief periods unless the staff person determines that such freedom appears likely to result in harm to the child, others, or property.

d. The rationale and authorization for the use of physical restraint and staff action and procedures carried out to protect the child's rights and to ensure safety shall be clearly set forth ~~clearly~~ in the child's record by the responsible ~~professional~~ staff persons.

ITEM 8. Amend paragraph **115.4(1)“b”** as follows:

b. A staff person shall be in each living unit at all times when children are in residence ~~and there shall be a minimum of three nighttime checks between the hours of 12 midnight and 6 a.m. These checks shall be logged. Policies for nighttime checks shall be in writing.~~